HLB Kuwaiti Accountant Auditing

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DOING BUSINESS IN KUWAIT

HLB Kuwaiti Accountant Auditing

Certified Public Accountants Business Advisors - Tax Experts (Kuwait)

Foreword

This booklet has been prepared for the use of clients, partners and staff of HLB International member firms. It is designed to give some general information to those contemplating doing business in Kuwait and is not intended to be a comprehensive document. You should consult us, therefore, before taking further action. HLB Kuwaiti Accountant Auditing & Partners and HLB International cannot be held liable for any action or business decisions taken on the basis of information in this booklet.

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ABOUT HLB INTERNATIONAL

Formed in 1969, HLB International is a world-wide network of independent professional accounting firms and business advisers. The network comprises member firms in over 100 countries who, collectively, have 1900 partners plus 14,500 staff in 500 offices. Member firms provide clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

Up-to-date information and general assistance on international matters can be obtained from any of the member firm partners of HLB Kuwaiti Accountant Auditing listed in this booklet or from the **Executive Office in London:**

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1. General Information

LOCATION & CLIMATE

The state of Kuwait covers an area of about 17,818 square kilometers of mostly flat desert in the north-western corner of the Arabian Gulf. To the south and south-west Kuwait is bordered by Saudi Arabia, and to the north and north-west by Iraq. Across the Arabian Gulf to the east, Kuwait faces Iran.

Kuwait’s coastal waters cover around 5,625 square kilometers and its coastline stretches across 290 kilometers. Kuwait has sovereignty over nine islands in the Gulf, of which the largest are Failaka, Bubyan and Warba. Others like Kubbar and Um Al Maradim, are too small for habitation.
Kuwait has a very hot and long summer, when maximum temperatures may reach around 50° C (120 F), but can occasionally go higher. In winter, temperatures may fall below zero in the desert.

LANGUAGE AND RELIGION

The official language of Kuwait is Arabic, though English is widely spoken and used in commercial circles. All correspondence with government ministries and bodies must be in Arabic.

Kuwait’s state religion is Islam and all Islamic feasts are observed: one of the most important of these being the holy month of Ramadan. During this period, Muslims fast from sunrise to sunset. Official working hours are reduced, and consequently, business activity tends to slacken somewhat.

POLITICAL STRUCTURE

The constitution of Kuwait was adopted on 11 November 1962. It declares Kuwait to be a sovereign, Islamic and democratic state. Kuwait is a constitutional monarchy with executive power residing in the Amir as head of the state and commander in chief. Kuwait has an elected National Assembly of 50 members supplemented by members of the Council of Ministers who attend ex-officio. The assembly sits for four years. The first elections of the National Assembly were held in 1963. On May 16, 2005, the assembly passed a law in support of women’s suffrage, allowing women to vote and run for office. Women participated in elections for the first time on June 30, 2006. On March 18, 2009 Kuwait's Amir dissolved parliament for the third time since January 2006 and called an election on May 16, 2009. The next election is scheduled for February 2012. The prime responsibility accorded to the National Assembly is the drafting of laws.

THE PEOPLE

The first settlements in Kuwait date back to very early times. A Bronze Age settlement has been discovered on Failaka Island, and evidence exists that at a later stage this settlement was visited by one of the admirals of Alexander the Great.

The origin of Kuwait's modern day indigenous population are tribes who moved from the south-west, the north and north-west starting more than 200 years ago. A thriving trading community grew up around the fishing and pearling harbor, consequently Kuwait established itself as a main trading centre in the region even before the advent of the oil age.

Data published by the PACI shows that Kuwait's total population stood at 3.44 million at the end of June 2009. Since 1998, the population has grown at an annualized average rate of 4.2%.

THE INFRASTRUCTURE

Kuwait has two modern commercial ports at Shuwaikh and Shuaiba which handle the bulk of its merchandise cargo traffic. Shuwaikh is the main commercial port with a total area of 3.2 million square meters and a basin of 1.2 million square meters. Shuaiba port is located 45 kilometers to the south of Kuwait City.

Kuwait's road system is well developed, with modern multi-lane expressways linking all areas of the country.

Kuwait International Airport is located south of the city, is easily accessible by expressway, has a number of regular flights to many regional, European and Asian destinations, and can handle the world's largest aircraft. Kuwait does not have a railway system, though one is being considered.

Kuwait has several power generating and water desalination plants, with a combined capacity to produce about 10.2 gigawatts (GW) of electric power and 369 million imperial gallons per day of desalinated potable water.

INDUSTRIAL AREAS

There are a number of Industrial areas in Kuwait. The largest of these are located in Shuwaikh, Shuaiba and Sabhan, with other smaller areas in Sulaibikhat, Jahra and Ahmadi. The areas come under the auspices and management of the Public Authority for Industry. The Shuaiba Industrial area is the most modern industrial zone attracting most new plants. It lies 50 Kilometers south of Kuwait city along the coast.

CURRENCY AND EXCHANGE RATE

The currency of Kuwait is the Kuwaiti dinar (KD), which is divided into 1000 fils (KD 1 = 1000 fils). Denominations of the currency notes are one-quarter, one-half, one, five, ten and twenty dinars, while the coins are denominations of five, ten, twenty, fifty, and one hundred fils.

For nearly four and a half years from the start of 2003, the exchange value of KD was officially pegged to the USD using a flexible peg. Under this regime, the central bank would set the KD / USD rate within a 7% band around the KD 0.29963 = USD initial parity rate set at the start of 2003. Though the Central Bank of Kuwait was free to set the rate on a daily basis within the band, the central bank generally maintained a fixed KD / USD rate for extended periods of time from late 2003. The 2003 change in policy came as a preparatory step towards the adoption of a single Gulf Cooperation Council currency by 2010, as Kuwait was the only country of the six member states not to have a formal peg to the US dollar.

However, in May 2007, the CBK decided to end its US dollar peg and peg the dinar to a basket of major currencies, a regime similar to that in place prior to 2003. Though the constituents are not disclosed, the USD is thought to have the largest weight with the euro, yen, and British pound having significantly smaller weights. As the end of November 2009, the rate stood at 0.285 KD/USD. Commercial banks fix their rate for commercial and financial transactions by reference to the central bank rate. Although the published retail rates show about a 1% buying and selling spread, it is normal to obtain more competitive quotes from the banks for large transactions.

2. The Economy

Kuwait has the fourth largest proven reserves of crude oil in the world and is among the world’s largest oil producers. As such, Kuwait’s economy is heavily dependent on the oil sector, which accounts for over half of gross domestic output. The heavy reliance on oil output has also meant that economic performance in Kuwait has depended on changes in oil prices which have often been quite volatile. However, government policy has ensured that this volatility does not result in large changes in activity in the non-oil sector and in household income.

Government policy effectively shields the domestic economy by maintaining steady growth in government expenditures. Even when revenues from oil have declined, government spending has continued to grow. This has been possible due to the vast foreign reserves accumulated by the government over the years which allow for the financing of substantial deficits without having to incur any debt. Since the mid-1970s, the government has appropriated 10% of its budget revenues to be invested in the Reserve Fund for Future Generations (RFFG). The government has also accumulated foreign assets in a number of other entities, including the general reserve fund (GRF), Kuwait Petroleum Corporation (KPC), and the Kuwait Fund for Economic Development Income from these investments are not included in budget revenues, but have been used to finance budget deficits in the past when they occurred. These assets are estimated at close to KD 84 billion ($312 billion) today, though no official figures are available. The bulk of the assets are held entirely in foreign securities and overseas investments. The government has sought to reduce the economy’s dependence on oil revenues by promoting investment in other sectors. The greatest success has been the strategy to increase investment in downstream oil industries, including refining and petrochemical production. Indeed, Kuwait refines about 0.9 million barrels per day of the crude oil it produces in three domestic refineries. It also has a number of petrochemical plants, with most of the production going for export.

Another strategy to diversify the economy has been to promote the role of the private sector, especially through the privatization of public sector enterprises. During the last 17 years, the government has successfully sold off interests in many commercial companies, in sectors such as telecom, investment, business services, and banking. The government has also seen some success in involving the private sector in Build Operate Transfer projects, particularly in real estate development and commercial ventures.

In recent years, the government has been more serious in promoting the role of foreign investment in diversifying the economy. A foreign direct investment law was enacted in 2001, allowing for 100%

ownership of businesses for the first time. Foreign investors were also allowed to own shares of domestic companies listed on the local stock exchange with a new portfolio investment law introduced in 2000. These measures are part of a broader economic reform programme that the government is developing to stimulate growth and liberalize its economy in a way consistent with the objectives of the World Trade Organization (WTO), which Kuwait joined in 1995.

GROSS DOMESTIC PRODUCT & GROSS NATIONAL PRODUCT

Kuwait's GDP stood at KD 39.79 billion ($141.93 billion) in 2008. Nominal GDP rose 22% in 2008, boosted largely by a rapid increase in the price of oil. GDP growth has averaged 22.8% over the last 5 years. Real growth in GDP during 2008 is estimated at 2.3%, compared to 4.4% in 2007 and to an average of 6.5% over the last five years.

Non-oil output rose to KD 14.8 billion ($ 55 billion), growing at a rate of 3.5% in 2008 and averaging 13.4% growth during the last five years.

The non-oil sector is dominated by services, which accounted for 32% of output in 2008. Manufacturing made up another 5.6% of GDP, of which more than 60% was refined petroleum products. Transportation, storage, and communication are another important part of this sector, contributing more than 5.5% of GDP. The fastest growing non-oil activities were finance, real estate and business services, whose average growth has topped 20.2% over the last five years.

The public sector plays an important role in Kuwaiti economy. Government spending is an important driver of economic activity, with the public sector accounting for 31.2% of total consumption expenditures on GDP in 2008. In capital spending, the government dominates as well. The public sector is also the largest employer of Kuwaiti nationals, and the single largest employer in Kuwait, employing 17.9% of the total workforce as of end 2008.

THE OIL SECTOR

Kuwait's crude oil production averaged about 2.6 million barrels per day (mbd) in 2008, near the maximum production capacity. Though, as a member of OPEC, Kuwait must limit its output to the assigned ceiling, production tends to be slightly above the OPEC target especially when oil prices are high. Official production capacity is estimated to have risen to 3.1 mbd in 2009.

Oil Production is poised for a substantial expansion in coming years. The plan is to expand to 3.5 mbd by 2015 and 4 mbd by 2030 from the present 2.6 mbd.

A large part of Kuwait's crude oil output is refined domestically at one of Kuwait's three oil refineries at Shuaiba, Mina Ahmadi, and Mina Abdullah. Total production capacity of these refineries is 0.93 mbd. The government's plan to build a fourth refinery was shelved in 2009, though the plan will be revived.

The oil sector is run by the state-owned Kuwait Petroleum Corporation (KPC) and its subsidiaries. Subsidiaries responsible for oil sector activity in Kuwait include Kuwait Oil Company (KOC), in charge of exploration and production, and Kuwait National Petroleum Company (KNPC), which runs the domestic refineries and domestic retail stations.

Petrochemical Industries Company (PIC) is another subsidiary in charge of several petrochemical plants. Kuwait Petroleum International (KPI) runs the refineries outside Kuwait and is in charge of international marketing.

PUBLIC FINANCE

The government budget is dominated by oil receipts. Revenues from the sale of crude oil made up between 81% and 94% of total revenues between 1998 and 2009. Other revenues come mainly from import duties, taxes on foreign firms and various service charges levied by the government ministries and departments.

Revenues in fiscal year 2008/09, that ended in March 2009, amounted to KD 21 billion ($78 billion), up 10% from the previous year. Oil revenues accounted for over 94% of the total. Government spending soared by 88% to KD 18.3 billion ($67.9 billion). Growth excluding these transfers would have reached 7.1%.

The 2009/10 fiscal year's draft budget shows a 10.2% decline in spending, excluding the KD 5.5 billion transfer to PIFSS in the previous fiscal year. Allocations to capital projects are projected to drop 24% to KD 1.3 billion ($ 4.4 billion), while spending on goods and services will be reduced by a similar proportion. Wages & salaries are expected to see a growth of 8.3%. With revenues estimated at a conservative KD 8.1 billion ($27.9 billion), the budget is projected to see a deficit of KD 4.0 billion.

MONEY AND BANKING

Kuwait has fourteen conventional banks including eight branches of foreign banks. There are three Islamic banking institutions and one specialized bank. Total assets at local banks reached KD 39.2 billion ($142.2 billion) at the end of 2008, growing by 10.4% from the year before. Private deposits totalled KD 21.2 billion ($77 billion), up 16%.

THE KUWAIT STOCK EXCHANGE

There were 202 companies listed on Kuwait Stock Exchange (KSE) as at the end of November 2009 up from 105 companies in 2003 and 86 in 2000. The market's capitalization totalled KD 29.11 billion, 27% lower than in November 2008. The KSE is the second largest bourse in the Arab world in terms of market capitalization after Saudi Arabia's equity market.

Average daily activity until end of November 2009 stood at KD 90 million, compared to KD 154 million in the prior more active year.

PRIVATIZATION

Kuwait launched its privatization programme in September 1994 when it began selling the government's shares in local companies to the public. Most of the companies divested were publicly listed on the KSE and were acquired by the government in the wake of the 1982 stock market crash. These companies engaged in activities ranging from banking, to insurance, to fishing, and food retailing.

FOREIGN TRADE

Kuwait's imports in 2008 totalled KD 6.7 billion ($25 billion). The country depends heavily on imports to meet most of its needs of foodstuffs, consumer goods, capital goods and intermediate products. According to 2007 data, 36% of Kuwait's imports are consumer goods, 26% are investment goods, while intermediate goods accounted for the remaining 38%.

According to 2007 CBK figures, Germany is Kuwait's largest supplier of goods, followed by the USA and China. Other main sources of imports include Japan, Italy, Saudi Arabia, India, United Kingdom, and United Arab Emirates. Imports from other Gulf Cooperation Council states have been growing since the introduction of the Gulf Cooperation Council customs union, growing by 34% in 2007 from the year before. Kuwait's exports in 2008 reached KD 23.4 billion (USD 87 billion). Exports of crude oil and refined products accounted for 95% of total exports. Of Kuwait's non-oil exports of Kuwaiti origin, petrochemical products accounted for an overwhelming 75%. The remaining consisted of re-exports, mainly of machinery and transportation equipment.

BALANCE OF PAYMENTS

Since liberalization, Kuwait has generally enjoyed a surplus on its current account. The surplus soared to KD 17.4 billion ($64.7 billion) in 2008, an estimated 43.7% of GDP. The average current account surplus to GDP during the last five years stood at a substantial 40%. The large trade surpluses from Kuwait's oil exports are the most important factor behind the current account surplus but are not the only reason. The country also enjoys substantial foreign investment income which amounted to 6.8% of GDP in 2008. This is primarily due to the income earned on government assets invested abroad, mainly in industrial countries. On the other hand, remittances of expatriate workers, which amounted to 3.8% of GDP in 2008, represent a notable though limited drain on the current account.

3. Regulatory Frameworks

Kuwait's overall regulatory climate is largely defined by two key factors. The first is the government sector's dominance of the economy. Accounting for over three-quarters of GDP, the government sector is the largest potential source of business in the country. Accordingly, the most important regulations relate, in one way or another, to relationships with the government. The second factor is that one of the essential aims of the government is to ensure the local population is involved in, and benefits from commercial and economic developments in the country. Thus, many regulations require or encourage the involvement of Kuwaitis in business ventures.

MAJOR CODES

The three most important laws governing business activity in Kuwait are the Commercial Companies Law (15/1960) and its amendments, the Civil Code (67/1980), and the Commercial Code (68/1980), all strongly influenced by France's Napoleonic code. These three codes form the backbone of the law governing such areas as civil relations, general contract law, banking operations and commercial instruments (including bill of exchange, checks, promissory notes), commercial and other agencies, carriage and storage of goods, bankruptcy, construction and contracting. In addition, there are a number of laws dealing with specific topics such as taxation, foreign direct investment, lease contracts, and civil and commercial procedures. There is also a maritime code, which covers such as maritime claims, ship registration, charter parties, marine insurance and bills of lading.

FORMS OF DOING BUSINESS

The Commercial Companies Law provides for the establishments of the following types of companies and ventures in Kuwait:

- Limited Liability Company (WLL)
- Closed Shareholding Company (KSCC)
- Public Shareholding Company (KSC)
- Joint Liability Company
- Limited Partnership
- Joint Venture

All the above, with the exception of the joint venture, possess a separate legal identity.

A. Limited Liability Company

A limited liability company (WLL) is an entity where the liability of its members is limited to the extent of their share capital contribution. This is the most common corporate entity in Kuwait and the main route adopted by foreign companies or investors to enter the market. The capital of the limited liability company must not be less than KD 7,500, though in practice the minimum capital currently required is higher than that. It incorporates through the articles of association, which sets out its objectives, capital, members, management, and other details. No share certificates are issued to certify ownership. The required capital in a limited liability company may in fact vary from industry to industry, and the whole of a company's capital must be paid at the date of incorporation. Payment may be in cash or in other assets at their fair market value.

A limited liability company requires at least two founding members. Originally, members were required to be natural persons with at least one member. However, Kuwaiti Law 15/1960 was amended by law 28/1995, which allowed companies to be founding members of limited liability companies. Both foreign individuals and corporate bodies may use this type of entity. The maximum number of members in a WLL is 30. The proportion of Kuwaiti capital must not be less than 51%, unless the venture receives approval under the FDI Law allowing up to 100% foreign ownership. A limited liability company is normally managed by one or more managers with or without remuneration.

The managers need not be Kuwaiti nationals or members of the company. If the managers are not named in the Articles of Association, they are appointed by the members in a general meeting. The limited liability company can start to do business upon obtaining a trade license issued by the Ministry of Commerce and Industry. The WLL cannot engage in insurance, banking, or investment on behalf of others.

B. Shareholding Company

Shareholding companies may be either public or closed and must have at least five shareholders. The public shareholding company (SAK or KSC) is similar to a common law limited liability company, with a higher capital requirement. The founders of a public shareholding company are required to subscribe to at least 10% of the capital. Such companies can issue shares that are easily transferable; investors need not pay the entire authorized capital immediately, some of which can be issued and called up later; they must have an elected Board of Directors and a Chairman; major decisions require approval by a general assembly of members in an ordinary or extraordinary meeting; and a SAK or KSC can be listed on the Kuwait Stock Exchange. Foreigners are allowed to participate in the formation of public shareholding companies within a 49% maximum, except where 100% ownership is permitted in accordance with the FDI Law.

C. Partnership

The Commercial Companies Law also governs the formation of partnerships, both general and limited.

A general partnership, or a joint liability company, is an association of two or more persons formed under a specific name to carry on commercial business. The partnership has a separate legal personality, but its members are jointly and individually liable for its obligations to the extent of their entire personal property.

A joint liability company is managed by one or more managers, whether partners or not. Transactions concluded by managers in the company's name and within the limit of their authority are considered binding on the company, provided that the other party to the transaction deals in good faith.

There are two types of limited partnerships; the simple limited partnership and the partnership limited by shares. A simple limited partnership consists of joint liability members (general partners), who are jointly and individually liable for the company's debts to the extent of all their assets; and sleeping members (limited partners), who are liable only to the extent of their respective contributions. A partnership limited by shares is a limited partnership whose capital is divided into shares. Sleeping partners in partnership limited by shares are generally subject to the same rules as shareholders in a shareholding company.

D. Joint Venture

A joint venture is a commercial association formed by two or more parties. It is purely based on a contractual arrangement between the parties, has no separate legal personality distinct from its members, and is not registered in the commercial register. A joint venture is not considered binding on a third party and each party in the venture is separately liable for its obligations. There are no limitations on foreign participation in joint ventures. It is common for foreign contractors involved jointly in a major project in Kuwait to form a joint venture or consortium. The liability of the party in a joint venture transaction with third parties is unlimited.

E. Commercial Agency

The commercial agency provides a means for a foreign company to conduct organized marketing efforts without establishing a registered local presence of its own. Agency agreements and regulations are governed by Law No. 36/1964 and 68/1980. Only Kuwaiti individuals or companies may act as commercial agents, which must be registered with the Ministry of Commerce and Industry.

F. Branch

A foreign company wishing to open an office to conduct business and commercial activities must act through a Kuwaiti agent under whose name and sponsorship the operation is carried out. A foreign company or investor may be exempted from seeking a Kuwaiti agent if approval is obtained in accordance with the foreign direct investment law.

KUWAIT CHAMBER OF COMMECE AND INDUSTRY

The Kuwait Chamber of Commerce and Industry (KCCI) is a quasi-government body and plays a key role in the business community. Any Kuwaiti or non-Kuwaiti agent, firm or business must be registered with the KCCI in order to operate in Kuwait, apply for an import license or bid for a government contract. The chamber maintains an official court of arbitration for resolving business disputes and is involved in setting standards and defining customary practices in commercial matters.

LICENCING REGULATIONS

A business license is necessary to carry on business in Kuwait. Licenses are classified by different activities such as general trading, contracting, financing, consultancy, construction, importing and industrial licenses. It is necessary to have a valid license to carry on a particular activity. Some licenses are graded. Licenses are issued only to Kuwaiti nationals or to Kuwait owned companies, though in some cases they can be issued to Gulf Cooperation Council nationals and companies.

Work Permits, No-objection Certificates & Work Visas

A person in Kuwait on a visit visa is not permitted to take up employment. Work visas are iqamas granted under articles 17 (for public sector employees) and 18 (private sector employees) of the immigration regulations. To obtain residence on a work visa an offer of employment must first be accepted. The Kuwaiti sponsoring employer then applies for a work permit from the Ministry of

Social Affairs & Labour, for which the sponsor needs a copy of the employee's passport showing full personal details, and any other Kuwait entry visas. A private sector sponsoring employer must then obtain a no-objection certificate (NOC) from the General Administration of Criminal Investigation at the Ministry of the Interior which he does by submitting the employee's personal details.

If the employee is living in a country that has a Kuwaiti Embassy the employer will send him a copy of the work permit, which the employee will take, with a medical certificate, to the Kuwaiti Embassy for endorsement. The Kuwaiti Embassy will have received a copy of the work permit through the Ministry of Foreign Affairs. Those sponsored by private sector companies will require their NOCs and a copy of the employer's authorised signatory as registered for business purposes. A good conduct certificate, which is obtained from the police in the last place of residence, may be required for some nationalities. Applicants are also required to provide a medical certificate stating that their general state of health is good and that they are free of specific epidemic diseases. The Embassy will then provide an entry visa for Kuwait on submission of the application form.

If the employee is living in a country that has no Kuwaiti Embassy then the sponsor will submit the work permit and NOC to the Ministry of the Interior to obtain the entry visa. If an employee is on a visit visa to Kuwait when he accepts employment, then, once the work permit and NOC are ready, he must leave Kuwait and return on the entry visa the sponsor obtains for him. This can be a short round trip to Bahrain by air for the day.

Once he has entered Kuwait on the entry visa, the employee is required to undergo medical tests and obtain a fingerprint certificate before he can process his residence visa. Once an expatriate has obtained his residence then he must obtain a civil identity (ID) card (bitaqa-almadiniyah or bitaqa for short), no matter what type of residence he is on. Civil ID cards are issued by PACI, the Public Authority for Civil Information. After his first card has been issued, the holder's civil ID number remains the same even if he changes his sponsor or leaves and comes back several years later on a different residence visa.

There is no exchange control and residents and non-residents may freely purchase and sell foreign currencies in Kuwait. Imports from any permitted source may be paid freely.

4. Financial Reporting and Auditing

All business enterprises are required to keep adequate financial records. Ministerial Order No. 206/1985 specifies books and records to be kept by a foreign body corporate subject to the provisions of the income tax laws and records be kept by a foreign body corporate subject to the provisions of the income tax decree as detailed below. The books of account of a taxpayer are invariably inspected by the department of Income Taxes before a tax assessment is finalized.

Compliance with accounting and standards promulgated by the International Accounting Standards Committee (IASC) is mandatory for shareholding and limited liability companies for accounting periods starting on or after Jan.1, 1991.

For public shareholding companies, the audited balance sheet and income statement, the director's report, and the auditors' report must be submitted in Arabic within three months of the end of the financial year to the Ministry of Commerce and Industry and to the general assembly of shareholders. If the company is listed on the Kuwait Stock Exchange (KSE), it must also submit audited reports to the KSE. Unaudited reports must be filed with the above named authorities on a quarterly basis.

The names of public company directors and auditors must be published in the official gazette. This is not required for closed shareholding companies. Audited financial statements of limited liability companies must be submitted to the Ministry of Commerce and Industry within 10 days of the annual general meeting. Such companies are obliged to hold a general meeting at least once a year.

There are no statutory audit requirements on partnerships, joint ventures, or commercial agencies. In practice, however, an audit is usually necessary for income tax purposes in cases where there is foreign participation.

5. Taxation

As Kuwait does not have a personal income tax, companies doing business in the country do have to pay certain taxes and obligations. Most notable in this regard is the tax levied on the profits of companies with foreign ownership. Local companies also need to consider other obligations including a mandatory contribution to the Kuwait Foundation for the Advancement of Sciences, social security obligations, and National Labour Support tax.

The National Assembly approved an amendment on 26 December 2007, stipulating that new tax rules shall go into effect at the start of the tax period to follow the law's publication in the official gazette. The law provides for a period of six months for the Ministry of Finance to issue the implementation regulations, and as such, any new regulations will become effective only once they are issued.

The tax is imposed on all foreign companies, other than Gulf Cooperation Council companies that are wholly owned by Gulf Cooperation Council nationals. The tax does not apply to foreign individuals or to Kuwaiti companies with non-Kuwaiti partners or shareholders, unless those shareholders or partners are foreign companies, in which case the tax is imposed on the foreign company's share of the earnings.

According to the new law, earnings from any of the following activities are subject to the tax:

1. Profits realized on any contract that is partially or fully executed in Kuwait.
2. Amounts received from the sale of, leasing, or from granting a franchise to use any trademark, patent or copyright.
3. Commissions from commercial representation or intermediary agreements.
4. Commercial or industrial activities.
5. Profits realized from the sale of assets.
6. Trading in property or goods, or rights to them, and the establishment of a permanent office in Kuwait to undertake such activities.
7. Rental of property.
8. Service provision

Expenses associated with the income to be taxed may be deducted as follows:

1. Wages, salaries and end of service indemnity
2. Other taxes and fees
3. Depreciation, subject to the specifications of the implementing regulations
4. Donations to Kuwaiti charities, subject to limitations specified in the implementing regulations
5. Head office expenses in accordance with the specifications of the implementing regulations

Kuwait has signed and ratified double taxation treaties with the following countries:

Iraq, Libya, Palestine, Saudi Arabia, Somalia, Tunisia, United Arab Emirates, Yemen, Austria, Belarus, Belgium, Bulgaria, Canada, China, Croatia Cyprus, Czech Republic, Egypt, Ethiopia, France, Germany, Greece, Hungary, India, Indonesia Tunis, Italy, Jordan, South Korea, Lebanon, Malaysia, Malta, Mauritius, Mongolia, Morocco, Netherlands, Pakistan, Poland, Romania, Russia, Serbia and Montenegro, Singapore, Syria, South Africa, Sri Lanka, Sudan, Switzerland, Thailand, Turkey, United Kingdom, Uzbekistan, Ukraine, Venezuela, Zimbabwe.

Under article 44 of Law No. 2 of 2008, the tax authorities have the right to revoke any agreement or procedure intended for tax avoidance.

There is no stamp duty, property tax, VAT or sales tax in Kuwait.

There is no provision in the income tax law regarding any limitations on fees paid to local agents or sponsors, but the current practice of the tax department is to allow a maximum deduction of 3% of the gross annual reserve from the taxpayer's operations in Kuwait.

Income Tax Rates on companies – 15% flat rate tax charged on earnings above KD5,250.

Social insurance for Kuwaiti employees is payable by both employer and employee based on the employee's salary (up to a ceiling of KD 2,250 per month). The contribution rates for social insurance are 11% and 7% of the employee's salary for employer and employee respectively, required to be deducted by the employer and paid monthly.

TENDERING REGULATIONS AND PROCEDURES

The Central Tenders Committee (CTC), an independent government agency attached to the Council of Ministers, is the government authority responsible for pre-qualifying firms, issuing government tenders and awarding contracts. Tendering procedures executed by this committee are regulated by Laws 37/1964, 18/1970, and 81/1977. Law 81/1977 allows government bodies to independently import commodities and/or commission the execution of work directly, or by way of tenders, and not through the CTC, if the value of the contract is not in the excess of KD 5,000. However, such contracts shall not be concluded to cover the same commodities or works more than once in a calendar month.

A foreign company bidding for a government contract must be registered to operate in Kuwait and have a Kuwaiti agent. To prequalify, the Kuwaiti agent of that particular company must submit a standard set of documents outlining its capabilities to the CTC. The CTC in turn sends a list of approved companies to the ministry or ministries concerned. The latter will assess the technical qualifications of the company on the list, particularly its experience with similar projects, technical capabilities, and financial strength. A shortlist of prequalified companies is then presented to the CTC. The CTC can add a company to the shortlist if it feels it has been erroneously excluded.

THE COURTS AND ABITRATION

The court system of Kuwait is divided into six branches: personal, criminal, commercial, administrative, leases and civil courts. There are three levels in the Kuwaiti legal system, namely the Court of First Instance, the Court of Appeal, and the Court of Cassation. The personal courts have jurisdiction over matters relating to the personal status of Muslims, in particular family and inheritance law.

The arbitration authority is empowered to rule on and conciliate disputes between government ministries or other government bodies and companies that are fully owned by the government, or between these companies, or between individuals or private legal entities and government ministries and other public bodies, and generally between any parties that agree to its arbitration.

6. Trading Environment

Because of its limited domestic resources outside the oil sector, Kuwait provides a substantial market for a wide variety and range of imports in an intensely competitive environment. Few restrictions on imports exist, provided that imported goods conform to quality control standards set by the government. There are also no controls on the movement of foreign exchange, nor restrictions on trade with other countries, with the exception of Israel.

In a bid to achieve greater integration with the global economy, Kuwait became a member of the World Trade Organization (WTO) in 1995. Kuwait has also made efforts to strengthen trade relations with partners in the region. In January 2005, Kuwait began enforcing a zero-tariff regime on exports originating from members of the Greater Arab Free Trade Area (GAFTA). Kuwait is also part of a Gulf Cooperation Council customs union which has eliminated all tariffs and trade barriers between Gulf Cooperation Council member states.

Kuwait has been eager to establish strong trade ties with the US. In February 2004, Kuwait signed a Trade and Investment Framework Agreement (TIFA) with the United States. The agreement is considered the first step in developing economic reform and trade liberalization criteria to strengthen economic relations with the US and to work toward an eventual Free Trade Agreement (FTA).

CUSTOM DUTIES AND TARIFFS

In Kuwait, a flat rate of 5% is applied to the cost, including insurance and freight (CIF), of imported goods. Since 1985, Kuwait has had a system of tariff protections, allowing industries which meet at least 40% of local market demand to apply for tariff protection. Tariff rates depend on the domestic value-added content of the products in question. If the domestically produced goods contain at least 20%, 30% or 40% of domestic value added, protective duties of 15%, 20% or 25%, respectively, may be applied. The degree of protection given by the formula is reduced by 5% in the case of consumer goods. In total, some 58 items receive tariff protection from the government. The maximum duty that may be imposed on products that compete with locally manufactured goods is 100%.

EXPORTING TO KUWAIT

Only Kuwaiti registered members of the Chamber of Commerce may import goods. The agent could be either a commission agent or a distribution agent. The commission agent acts purely as an intermediary, selling on behalf of his principal, for which he may receive a commission. The importing and distributing agent acts as a distributor or wholesaler. Both forms of an agency may be on an exclusive basis.
The highly competitive Kuwaiti market reduces the possibility of importing goods through third parties and commission agents.

IMPORT REGULATIONS

Law No. 43/1964 and its amendments stipulate regulations concerning imports to Kuwait. Import licenses are required for all commercial imports, and commercial imports are limited to registered importers. Importers do not need an import license for each product or shipment to be imported. To be registered in the Commercial register at the Ministry of Commerce, an importer must be either a Kuwaiti citizen, or a firm in which all partners are Kuwaiti nationals, or a limited liability Kuwaiti company. The ministry of commerce & industry may refuse or restrict the number of licenses for any goods or product except foodstuffs, or waive the requirement for import licenses in particular cases. Special Import licenses are required for regulated goods such as arms, ammunition and explosives, radioactive materials, ethylene alcohol, drugs, pesticides and insecticides, some exotic birds and vintage cars.

Some drugs require special license from the ministry of health. Shipment of animals, animal products, plants require health certification and inspection of the country of origin. All food stuffs are subject to strict regulations covering packaging, labeling, description of contents, and date of manufacture and expiry.

7. About HLB Kuwaiti Accountant Auditing

HLB Kuwaiti Accountant Auditing has been providing valuable service to its clients since 1997. Through sustained growth, as a global net work of professional accounting firms, HLB Kuwaiti Accountant Auditing serves its clients wherever they operate. HLB Kuwaiti Accountant Auditing has committed to its clients and its special approach ensures a close working relationship with clients, ensures the value of money along with its quality. Clients of HLB Kuwaiti Accountant Auditing are engaged in diversity of business which need extended care and attention to the technical and professional level, ensures highest quality and promptness through our highly experienced professional team.

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